

LATHAM & WATKINS LLP
Melanie M. Blunschi (Bar No. 234264)
melanie.blunschi@lw.com
Francis J. Acott (Bar No. 331813)
francis.acott@lw.com
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.391.0600

Attorneys for Defendant James H. Herbert, II

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALEXANDRA KUSEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

JAMES H. HERBERT, II, HAFIZE GAYE
ERKAN, MICHAEL J. ROFFLER, OLGA
TSOKOVA, MICHAEL D. SELFRIDGE,
NEAL HOLLAND, and KPMG, LLP,

Defendants.

Case No.: 3:23-cv-02940-AMO

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING BRIEFING ON
DEFENDANTS' MOTIONS TO DISMISS**

As Modified by the Court

Hon. Araceli Martínez-Olguín

Pursuant to Civil Local Rule 7 and the Joint Stipulation Regarding Deadlines for Filing and Responding to the Complaint entered by the Court on December 18, 2023 (Dkt. 112), Lead Plaintiff Alecta Tjänstepension Ömsesidigt (“Lead Plaintiff”) and additional named plaintiff Neil Fairman (together, “Plaintiffs”) and Defendants James H. Herbert, II, Michael J. Roffler, Olga Tsokova, Michael D. Selfridge, Neal Holland (collectively, the “Individual Defendants”) and KPMG LLP (“KPMG,” and together with the Individual Defendants, “Defendants”) (collectively, the “Parties”), by and through their respective counsel, hereby stipulate as follows:

WHEREAS, on December 18, 2023, the Court entered an Order approving the Parties’ stipulated briefing schedule for responding to the amended complaint and setting the deadline for any motion to dismiss on April 29, 2024, with the opposition brief due June 28, 2024, and the reply brief due August 12, 2024, Dkt. 112;

WHEREAS, the Court’s December 18 Order further stated that “each side must file a consolidated brief in the event a motion to dismiss is filed (*i.e.*, all defendants file a single consolidated opening brief, Lead Plaintiff files one responsive brief, and all defendants file a single consolidated reply brief),” but provided that “[i]f the parties believe consolidated briefing warrants an adjustment to the default page limits set by Civil L.R. 7, the parties shall meet and confer and submit a stipulation and proposed order with their reasonable proposals for excess pages,” *id.*;

WHEREAS, on February 13, 2024, Plaintiffs filed their Complaint for Violations of the Federal Securities Laws (the “Complaint”), Dkt. 123, which is nearly 200 pages long and challenges 61 statements and omissions by seven different Defendants, each of whom is separately represented, *id.*; *see also* Dkt. 125 (Appendix);

WHEREAS, Defendants intend to move to dismiss the Complaint;

WHEREAS, under Local Rules 7-2 and 7-3, the default page limit for a motion to dismiss is 25 pages for the motion and opposition briefs, and 15 pages for the reply brief;

WHEREAS, due to the complexity of the allegations and the number of challenged statements in the Complaint, as well as the nature of Plaintiffs’ allegations against each of the

1 differently situated Defendants, Defendants believe that it would further the efficient and
 2 streamlined resolution of challenges to the Complaint to permit (a) relief from the single
 3 consolidated briefing requirement to allow two motions (*i.e.*, one consolidated motion by the five
 4 Individual Defendants who have been served and one individual motion by KPMG¹) and (b) an
 5 enlargement of the default page limits under Civil Local Rule 7 for the Individual Defendants'
 6 consolidated brief; and

7 WHEREAS, the Parties have met and conferred and agreed, subject to the Court's
 8 approval, that (a) the Individual Defendants may file a consolidated motion to dismiss and
 9 KPMG may separately file its own motion to dismiss, (b) Plaintiffs will file a consolidated
 10 opposition to KPMG's and the Individual Defendants' motions to dismiss, and (c) the default
 11 page limits under Civil Local Rule 7 should be extended for the Individual Defendants'
 12 consolidated motion to dismiss, Plaintiffs' omnibus opposition, and the Individual Defendants'
 13 consolidated reply.

14 Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs
 15 and Defendants, that:

- 16 1. The Individual Defendants may file one consolidated motion to dismiss, and
 17 KPMG may file a separate motion to dismiss;
- 18 2. The page limit for the Individual Defendants' consolidated motion to dismiss
 19 shall be 40 pages and the page limit for KPMG's motion to dismiss shall be 25
 20 pages;
- 21 3. Plaintiffs may file an omnibus opposition to Defendants' motions to dismiss, and
 22 the page limit for the omnibus opposition shall be 65 pages; and

23
 24 ¹ KPMG was First Republic Bank's independent auditor. The only challenged statement as to
 25 KPMG is Statement Number 58, which was KPMG's audit opinion for the year ending
 26 December 31, 2022. Dkt. No. 125, Statement No. 58. That statement was made by KPMG only,
 27 and not any of the Individual Defendants. The independent auditor in securities cases in this
 28 district regularly file a separate motion to dismiss given the auditor's separate role. *See, e.g., In*
re SVB Fin. Grp. Sec. Litig., No. 3:23-cv-01097-JD, slip op. at 1 (N.D. Cal. Mar. 8, 2024), Dkt.
 No. 116 (order granting KPMG separate brief); Auditor PwC's Motion to Dismiss, *Mehedi v.*
View, Inc., No. 5:21-cv-06374-BLF (N.D. Cal. Oct. 6, 2022), Dkt. No. 141; Auditor PwC's
 Motion to Dismiss, *Hunt v. Bloom Energy Corp.*, No. 4:19-cv-02935-HSG (N.D. Cal. July 1,
 2020), Dkt. No. 127.

- 1 4. The page limit for the Individual Defendants' consolidated reply in support of
2 their motion to dismiss shall be 25 pages and the page limit for KPMG's reply in
3 support of its motion to dismiss shall be 15 pages.
4

5 DATED: March 11, 2024

LATHAM & WATKINS LLP

6 /s/ Melanie M. Blunschi
7 Melanie M. Blunschi (Bar No. 234264)
8 *melanie.blunschi@lw.com*
9 Francis J. Acott (Bar No. 331813)
10 *francis.acott@lw.com*
11 505 Montgomery Street, Suite 2000
12 San Francisco, California 94111-6538
13 Telephone: +1.415.391.0600

Attorneys for Defendant James H. Herbert, II

14 DATED: March 11, 2024

STEPTOE LLP

15 /s/ Jason M. Weinstein
16 Jason M. Weinstein (*pro hac vice* forthcoming)
17 *jweinstein@steptoe.com*
18 Michelle L. Levin (*pro hac vice* forthcoming)
19 *mlevin@steptoe.com*
20 Charles A. Michael (*pro hac vice* forthcoming)
21 *cmichael@steptoe.com*
22 1114 Avenue of the Americas
23 New York, NY 10036
24 Tel: (212) 506-3900

Attorneys for Defendant Michael J. Roffler

25 DATED: March 11, 2024

SHER TREMONTE LLP

26 /s/ Theresa Trzaskoma
27 Theresa Trzaskoma (*pro hac vice*)
28 Erica A. Wolff (*pro hac vice*)
Rebecca Prager (*pro hac vice*)
Wesley Erdelack (*pro hac vice*)
90 Broad Street, 23rd Floor
New York, NY 10004
Telephone: (212) 202-2600
trzaskoma@shertremonte.com
ewolff@shertremonte.com

rprager@shertremonte.com
werdelack@shertremonte.com
Attorneys for Defendant Olga Tsokova

DATED: March 11, 2024

MORRISON & FOERSTER LLP

/s/ Carrie H. Cohen

Carrie H. Cohen (*pro hac vice* forthcoming)
Edward Imperatore (*pro hac vice* forthcoming)
250 West 55th Street
New York, New York 10109
Telephone: (212) 468-8000
ccohen@mofo.com
eimperatore@mofo.com

Christin Hill (CA SBN 247522)
425 Market St.
San Francisco, CA 94105-2482
Telephone: (415) 268-7000
chill@mofo.com

Attorneys for Defendant Michael Selfridge

DATED: March 11, 2024

SIMPSON THACHER & BARTLETT LLP

/s/ Joshua A. Levine

Joshua A. Levine (*pro hac vice* forthcoming)
425 Lexington Avenue
New York, NY 10017
Telephone: (212) 455-2000
jlevine@stblaw.com

Attorneys for Defendant Neal Holland

DATED: March 11, 2024

KING & SPALDING LLP

/s/ Lisa R. Bugni

Lisa R. Bugni (SBN 323962)
lbugni@kslaw.com
50 California, Suite 3300
San Francisco, CA 94111
Tel: (415) 318-1200

Richard Marooney (*pro hac vice* forthcoming)

1 rmarooney@kslaw.com
2 1185 Avenue of the Americas, 34th Floor
3 New York, NY 10036
4 Tel: (212) 556-2100

5 Kevin J. O'Brien (*pro hac vice* forthcoming)
6 kobrien@kslaw.com
7 1180 Peachtree Street, NE, Suite 1600
8 Atlanta, GA 30309
9 Tel: (404) 572-4600

10 *Attorneys for Defendant KPMG LLP*

11 DATED: March 11, 2024

12 KESSLER TOPAZ
13 MELTZER & CHECK, LLP

14 /s/ Jennifer L. Joost
15 Jennifer L. Joost (Bar No. 296164)
16 jjoost@ktmc.com
17 Stacey M. Kaplan (Bar No. 241989)
18 skaplan@ktmc.com
19 One Sansome Street, Suite 1850
20 San Francisco, CA 94104
21 Tel: (415) 400-3000
22 Fax: (415) 400-3001

23 Sharan Nirmul (*pro hac vice* forthcoming)
24 snirmul@ktmc.com
25 Nathan Hasiuk (*pro hac vice* forthcoming)
26 nhasiuk@ktmc.com
27 280 King of Prussia Road
28 Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

DATED: March 11, 2024

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

/s/ Jonathan D. Uslaner
Jonathan D. Uslaner (Bar No. 256898)
jonathanu@blbglaw.com
2121 Avenue of the Stars, Suite 2575
Los Angeles, CA 90067
Tel: (310) 819-3470

James A. Harrod (*pro hac vice*)

jim.harrod@blbglaw.com
1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 554-1400

*Counsel for Lead Plaintiff Alecta Tjänstepension
Ömsesidigt and additional named Plaintiff Neil
Fairman and Lead Counsel for the Proposed Class*

PURSUANT TO STIPULATION, THE COURT ORDERS AS FOLLOWS:

1. The Individual Defendants may file one consolidated motion to dismiss, and KPMG may file a separate motion to dismiss;


2. The page limit for the Individual Defendants' consolidated motion to dismiss shall be **35** pages and the page limit for KPMG's motion to dismiss shall be **15** pages;

3. Plaintiffs may file an omnibus opposition to Defendants' motions to dismiss, and the page limit for the omnibus opposition shall be **50** pages; and

4. The page limit for the Individual Defendants' consolidated reply in support of their motion to dismiss shall be **20** pages and the page limit for KPMG's reply in support of its motion to dismiss shall be **10** pages.

The parties are reminded to provide courtesy copies as required by the Court's Standing Order for Civil Cases ¶ H.6.

DATED: March 13, 2024


Hon. Araceli Martínez-Olguín
United States District Judge